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U.S.D.C. - Newnan

AUG 18 2005

AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODYBy: LUTHER D. THOMAS, Clerk
Deputy Clerk

United States District Court		District	Northern District of Georgia
Name of Movant	Tyrone Smith	Prisoner No.	52983-CF
Place of Confinement	Federal Correctional Institution, Edgefield	Case No.	3:00-cr-00027-JTC

3:05-CV-079-JTC

UNITED STATES OF AMERICA

v. Tyrone Smith

(name under which convicted)

MOTION

- Name and location of court which entered the judgment of conviction under attack United States District Court, for the Northern District of Georgia
- Date of judgment of conviction October 4, 2000
- Length of sentence Three Hundred Months (300)
- Nature of offense involved (all counts) ONE count of Conspiracy to distribute Five (5) kilograms of Cocaine and 50 grams of Cocaine base.
- What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐
- Did you testify at the trial?
Yes ☒ No ☐
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court Eleventh Circuit(b) Result Affirmed(c) Date of result September 16, 2003

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Eleventh Circuit(2) Nature of proceeding Rehearing En Banc(3) Grounds raised Same Ground Based on Direct Review in First Appeal.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result Denied(6) Date of result September 9, 2004

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A(2) Name of proceeding N/A(3) Grounds raised N/A

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

N/A

(6) Date of result

N/A

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes ☐No ☐

Certiorari was not

(2) Second petition, etc.

Yes ☐No ☐

filed.

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Certiorari was not timely sought by
Appellate Counsel in case at bar.

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: See attached Memorandum
of law.

Supporting FACTS (state *briefly* without citing cases or law):

Same

B. Ground two: See attached Memorandum
of law.

Supporting FACTS (state *briefly* without citing cases or law):

Same.

C. Ground three: See attached Memorandum
of law.

Supporting FACTS (state *briefly* without citing cases or law):

Same.

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D. Ground four: See attached memorandum
of law.

Supporting FACTS (state briefly without citing cases or law):

Same.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

Both trial and Appellate counsel repre-
sentation constructively denied Petitioner
the opportunity to present the ground set
forth in this memorandum of law.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing ~~XXXXXX~~ No preliminary hearing

(b) At arraignment and plea Bruce Harvey, Esq.

(c) At trial Dwight Thomas, Esq.

(d) At sentencing Same

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(e) On appeal Bernard S. Brody, Esq., The Great
Bldg. Suite # 205, 44 Broad Street N.W. Atl. Ga.(f) In any post-conviction proceeding N/A(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒N/A

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

8-16-05

Date

Tyrone Smith

Signature of Movant

Pro-se